



6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 18-C0001]

Polaris Industries Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Polaris Industries Inc. containing a civil penalty in the amount of twenty seven million, two hundred and fifty thousand dollars (\$27,250,000), to be paid within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 19, 2018.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 18-C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814-4408.

FOR FURTHER INFORMATION CONTACT: Daniel R. Vice, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East

West Highway, Bethesda, Maryland 20814-4408; telephone (301) 504-6996.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 30, 2018.

Alberta E. Mills,

Secretary.

CPSC Docket No.: 18-C0001

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”) and 16 CFR § 1118.20, Polaris Industries Inc. (“Polaris”), and the United States Consumer Product Safety Commission (“Commission”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Polaris is a corporation, organized and existing under the laws of the state of Minnesota, with its principal place of business in Medina, Minnesota.

STAFF CHARGES

4. Between February 2012 and April 2016, Polaris manufactured or imported, distributed and offered for sale in the United States approximately 133,000 Model Year 2013-2016 RZR 900 and Model Year 2014-2016 RZR 1000 recreational off-road vehicles (“RZR”).

5. Between April 2013 and April 2017, Polaris manufactured or imported, distributed and offered for sale approximately 93,500 Model Year 2014-2015 Ranger XP 900, XP 900 EPS and CREW 900 off-road vehicles (“Rangers”).

6. The RZR and Rangers (collectively, the “Vehicles”) are “consumer products” that were “distribut[ed] in commerce,” as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and (8). Polaris is a “manufacturer” of the Vehicles and imported the Vehicles, as such terms are defined in sections 3(a)(9) and (11) of the CPSA, 15 U.S.C. § 2052(a)(9) and (11).

Violation of CPSA Section 19(a)(4)

Staff Charges Regarding RZR 900s and 1000s

7. The RZR contained one or more defects which could create a substantial product hazard and create an unreasonable risk of serious injury or death because the RZR could catch fire while consumers were driving, posing fire and burn hazards to drivers and passengers.

8. Despite information that reasonably supported the conclusion that the RZR contained one or more defects that could create a substantial product hazard or create an unreasonable risk of serious injury or death, Polaris did not immediately report to CPSC.

9. Instead, Polaris filed a Full Report concerning the fire risk associated with MY 2014 to MY 2016 RZR on February 19, 2016. By that time, Polaris reported that it had received reports of 150 fires on MY 14-MY 16 RZR that had resulted in the death of a 15-year-

old passenger from a rollover that resulted in a fire, 11 reports of burn injuries, and a fire that burned ten acres of land.

10. Polaris and the CPSC announced a recall of 133,000 MY 13-16 RZR's on April 19, 2016, because the RZR's could catch fire while consumers were driving, posing fire and burn hazards to drivers and passengers. The repair remedy offered to consumers for this recall differed from the repair remedy offered for an earlier recall, jointly announced by Polaris and CPSC in October 2015 on MY 15 RZR 900s and 1000s, involving a pinched fuel tank vent line. By the time Polaris announced the April 2016 recall, it had received more than 160 reports of fires in MY 13-16 RZR's, including the fatality previously reported to CPSC and 19 reports of injuries, including first, second and third degree burns.

Staff Charges Regarding Ranger 900s

11. The Rangers contained a defect which could create a substantial product hazard and create an unreasonable risk of serious injury or death because the heat shield could fall off the vehicle, posing fire and burn hazards to riders.

12. Between December 2013 and July 2016, Polaris received 36 reports of fires associated with the MY 14 Rangers, including two incidents that resulted in minor burns to consumers. Polaris also implemented design changes to increase the attachment screw length and require the attachment screws to be fastened to a steel frame member to prevent the heat shields from becoming loose and falling off. The first design change was implemented on MY 15 Rangers and the latter on MY 16 Rangers.

13. Despite information that reasonably supported the conclusion that the MY 14 Rangers contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, Polaris did not immediately report to CPSC.

14. Instead, Polaris filed a Full Report on the MY 14 Rangers with the Commission, under 15 U.S.C. § 2064(b), on July 12, 2016.

15. Polaris and the Commission jointly announced a recall of 42,500 MY 14 Rangers on September 15, 2016 (“First Ranger Recall”) because the heat shields could fall off the vehicle, posing fire and burn hazards to riders.

16. Subsequent to the First Ranger Recall, Polaris received reports of heat shields coming loose or falling off on the MY 15 Ranger, including two reports of fire. Polaris did not immediately report this information to CPSC.

17. Instead, Polaris filed a Full Report on MY 15 Ranger 900s in March 2017, when the number of heat shield incidents on Rangers had reached 10, including five reports of fires. Polaris and CPSC jointly announced a recall of the MY 15 Rangers on April 13, 2017.

Staff Charges of Failure to Report Immediately

18. Despite having information reasonably supporting the conclusion that the Vehicles contained a defect or created an unreasonable risk of serious injury, Polaris did not notify the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

19. Because the information in Polaris’ possession about the Vehicles constituted actual and presumed knowledge, Polaris knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

20. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Polaris is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

RESPONSE OF POLARIS

21. Polaris conducted reasonable, expeditious, and diligent investigations into the reports of thermal events relating to the RZR and Ranger Vehicles. The RZR and Ranger Vehicles are four-wheel vehicles that have automotive-style controls and seating. Particularly in gasoline-powered vehicles, fires and other thermal events are notoriously difficult to evaluate and often do not allow for, and in fact impede, the prompt identification of root causes. Fires can, and do, occur in gasoline-powered vehicles for reasons unrelated to any potential defect in the vehicles. The causes of the fires varied. Polaris identified these causes over time in the course of its investigations. The issues involved in the RZR recall announced on April 19, 2016 were unrelated to an earlier recall, jointly announced in October 2015 on MY 2015 RZR 900s and 1000s, involving a pinched fuel tank vent line. Many of the RZR incidents received attention in the public media.

22. The signing of this Agreement does not constitute an admission by Polaris of the staff's charges in paragraphs 4 through 20, including, but not limited to, the charges that (a) the Vehicles contained defects that could create a substantial product hazard and created an unreasonable risk of serious injury; (b) Polaris failed to notify the Commission in a timely manner, in accordance with sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4); (c) Polaris failed to furnish information as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4); and (d) there was any "knowing" violation of the CPSA as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

23. The voluntary recalls of the RZR and Ranger Vehicles, as well as the voluntary section 15(b) reporting, by Polaris were conducted out of an abundance of caution and without

Polaris having determined or concluded that the RZR Vehicles or Ranger Vehicles contained a defect or posed an unreasonable risk of serious injury.

24. Polaris enters this Agreement to settle this matter without the delay and unnecessary expense of litigation.

AGREEMENT OF THE PARTIES

25. Under the CPSA, the Commission has jurisdiction over the matter involving the Vehicles and over Polaris.

26. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Polaris or a determination by the Commission that Polaris violated the CPSA's reporting requirements.

27. In settlement of staff's charges of violations of the CPSA, 15 U.S.C. §2068(a)(4), and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Polaris shall pay a civil penalty in the amount of twenty seven million, two hundred and fifty thousand dollars (\$27,250,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of Polaris under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

28. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Polaris to the United States, and interest shall accrue and be paid by Polaris at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment

Amount” and “Default Interest Balance”). Polaris shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Polaris agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Polaris shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney’s fees and expenses.

29. After staff receives this Agreement executed on behalf of Polaris, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 CFR § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 CFR § 1118.20(f).

30. This Agreement is conditioned upon, and subject to, the Commission’s final acceptance, as set forth above, and it is subject to the provisions of 16 CFR § 1118.20(h). Upon the later of: (i) Commission’s final acceptance of this Agreement and service of the accepted Agreement upon Polaris, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

31. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Polaris and (ii) the date of issuance of the final Order, for good and valuable consideration, Polaris hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Polaris failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

32. After receipt of the payment set forth in paragraph 27 above, the Commission releases and agrees that it will not seek civil penalties from Polaris, including its current and former directors, officers, employees, successors and assigns, for any violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), regarding a hazard or defect reported in connection with a model year vehicle for which Polaris, as of June 29, 2017, had submitted an Initial or Full Report under CPSA section 15(b), 15 U.S.C. §2064(b), and 16 CFR § 1115.13(c) and (d). This paragraph does not relieve Polaris from the continuing duty to report to the Commission any new, additional or different information as required by CPSA section 15(b), 15 U.S.C. § 2064(b), and the regulations at 16 CFR Part 1115.

33. Polaris represents and warrants that the information supplied by Polaris to the Commission in connection with the matters addressed in the Agreement was, at the time provided to the Commission, full, complete and accurate, to the best of Polaris' knowledge.

34. Polaris shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by

Polaris, and which shall contain the following elements: (i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury is referenced; (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iii) effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise; (iv) Polaris' senior management responsibility for, and general board oversight of, CPSA compliance; and (v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon request.

35. Polaris shall maintain and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed or sold by Polaris: (i) information required to be disclosed by Polaris to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (iii) prompt disclosure is made to Polaris' management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Polaris' ability to record, process and report to the Commission in accordance with applicable law.

36. Upon reasonable request of staff, Polaris shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Polaris shall cooperate fully and truthfully with staff and

shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Polaris' compliance with the terms of the Agreement.

37. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

38. Polaris represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Polaris, enforceable against Polaris in accordance with its terms. Polaris will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Polaris pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Polaris represent and warrant that they are duly authorized by Polaris to execute the Agreement.

39. The signatories represent that they are authorized to execute this Agreement.

40. The Agreement is governed by the laws of the United States.

41. The Agreement and the Order shall apply to, and be binding upon, Polaris and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Polaris, and each of its successors, transferees, and assigns, to appropriate legal action.

42. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

43. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the

Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

44. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR § 1118.20(h). The Agreement may be executed in counterparts.

45. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Polaris agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

POLARIS INDUSTRIES INC.

Dated: March 16, 2018

By: _____
Lucy Clark-Dougherty
Senior Vice President, General Counsel, Compliance Officer
and Secretary
POLARIS INDUSTRIES INC.

Dated: March 16, 2018

By: _____
Erika Z. Jones
Counsel to Polaris Industries Inc.

U.S. CONSUMER PRODUCT SAFETY
COMMISSION

Patricia Hanz
General Counsel

Dated: March 16, 2018

Mary B. Murphy
Assistant General Counsel

Dated: March 16, 2018

Daniel R. Vice
Trial Attorney
Division of Compliance
Office of the General Counsel

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:

POLARIS INDUSTRIES, INC.

CPSC Docket No.: 18-C0001

ORDER

Upon consideration of the Settlement Agreement entered into between Polaris Industries Inc. (“Polaris”), and the U.S. Consumer Product Safety Commission (“Commission”), and the Commission having jurisdiction over the subject matter and over Polaris, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Polaris shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of twenty seven million, two hundred and fifty thousand dollars (\$27,250,000), within thirty (30) days after service of the Commission’s final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: <http://www.pay.gov>. Upon the failure of Polaris to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Polaris at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Polaris fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 20th day of March, 2018.

BY ORDER OF THE COMMISSION:

Alberta E. Mills, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2018-06820 Filed: 4/3/2018 8:45 am; Publication Date: 4/4/2018]